DOCUMENT RESUME

ED 380 254 RC 019 994

TITLE	School Facilities Funding: IDRA Special Bulletin.
INSTITUTION	Intercultural Development Research Association, San Antonio, Tex.
REPORT NO	ISSN-1069-5672
PUB DATE	Mar 95
NOTE	11p.
PUB TYPE	Information Analyses (070) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120) -- Collected Works - Serials (022)
JOURNAL CIT	IDRA Special Bulletin; v22 n1 Mar 1995
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Court Litigation; *Educational Equity (Finance); Educational Facilities; Educational Finance; Elementary Secondary Education; *Equal Education; *Equal Facilities; *Equalization Aid; *Expenditure per Student; Public Education; School District Wealth; School Taxes; State Courts; State School District Relationship
IDENTIFIERS	*Texas

ABSTRACT

This special bulletin examines the Texas Supreme Court's January 1995 final opinion in the Edgewood vs. Meno case, the latest in a series of rulings on the constitutionality of the Texas public school funding system. The first article summarizes the majority opinion, discusses the implications of the court's 5-4 ruling, and suggests that further litigation to equalize funding is almost guaranteed. The second article suggests that, while disparities in educational funding were considerably reduced as a result of the Edgewood vs. Meno litigation, significant inequities remain, especially in regard to school grounds, equipment, and facilities. A legal analysis of the ruling notes that the Court decided to abide by the Texas Legislature's definition of the funding necessary for an accredited system based on a "general diffusion of knowledge" standard. This decision essentially changed the criteria being used to judge the constitutionality of the Texas system. Previous court decisions had been based on whether or not the funding system achieved substantially equal revenue for similar tax effort. The bulletin also includes an Intercultural Development Research Association "Children First" declaration, for which the Association seeks endorsement from both individuals and organizations. (RAH)

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INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION

IDRA Special Bulletin

ISSN 1069-5672 Volume XXII, No. 1 March 1995

ED 380 254

Court Ruling is Bad News for Children
IDRA Declares "Children First"

In a recent ruling, the Texas Supreme Court issued its final opinion in the *Edgewood vs. Meno* case, a long-running battle over the constitutionality of the Texas system for funding its public schools. Texas is one of 28 states in which state funding systems have been subjected to court challenges, and it is one of 13 states in which the courts had ruled that existing funding systems violated state constitutional provisions (see box below). IDRA created this bulletin to inform the ongoing discussions of this critical issue in Texas and throughout the country.

Included in this special bulletin are a commentary responding to the Texas Supreme Court's ruling, an overview of the ruling and its implications, a legal analysis of the ruling, and IDRA's declaration, "Children First." IDRA invites civic organizations, businesses, community groups, school personnel and the general public to join us in saying that "minimal" and inferior education for children is not acceptable.

This is the end of another round in the fight for the children of Texas. It is not the end of the fight. Our children deserve better. IDRA will continue to advocate for a system, including an equitable school facilities plan, that does not write-off our children.

IDRA is an independent nonprofit advocacy organization dedicated to improving educational opportunity. Through research, materials development, training, technical assistance, evaluation, and information dissemination, we're helping to create schools that work for all children.

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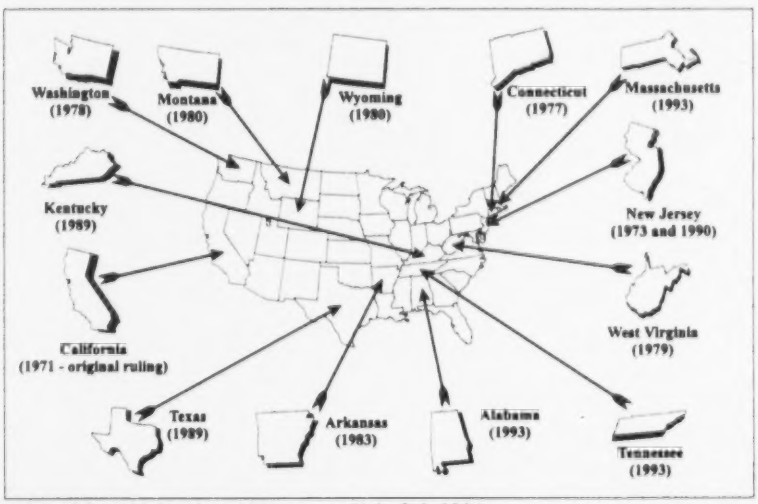
States in Which the School Finance System Has Been Ruled Unconstitutional by the State's Highest Court



Adapted from Multicultural Messenger, Vol. (2)1, 1994.

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Publication offices:
5835 Callaghan Road, Suite 350
San Antonio, Texas 78228-1190
Tel. 210/684-8180
Fax 210/684-5389

María Robledo Montecel, Ph.D.
IDRA Executive Director
Newsletter Executive Editor

Christie L. Goodman
IDRA Communications Manager
Newsletter Production Editor

Sarah H. Aleman
IDRA Graphics Specialist
Newsletter Typesetter

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EDUCATION IN TEXAS:
UNFUNDED AND UNFAIRLY FUNDED MANDATES

María Robledo Montecel, Ph.D. and José A. Cárdenas, Ed.D.

One of the highest priorities following the recent political upheaval in Washington is addressing the problem of unfunded mandates. Several states have complained that it is unreasonable for the Congress of the United States to mandate that the states address a variety of social and environmental problems without providing the states with the funds for doing so. State governments are demanding legislation that will prohibit the federal government from mandating state action without the funds that will prevent the mandate from imposing an unwanted financial burden on state governments. Our own Texas Governor George Bush has spoken in opposition to these unfunded mandates.

Opposition to unfunded mandates can only be partially justified. States cannot default on their responsibilities because of the absence of an accompanying check, and the meeting of many responsibilities does not necessarily require additional funds.

Regardless of the merit of the issue, the Texas opposition to unfunded mandates creates a most ironic situation in that Texas has a long tradition of enacting mandates without providing adequate funds for local governments to implement them. Although unfunded mandates from the Texas government involve as wide an array as do federal unfunded mandates, the most glaring examples are to be found in the field of education.

The Texas legislative enactment of pre-school programs, maximum class size and the school finance system imposed by Senate Bill 7 without the necessary accompanying funds are relatively trivial compared to the biggest and most detrimental unfairly funded mandate of the state: the entire operation of the educational system of the state of Texas.

Education is a state function. The Texas Constitution, like most other state constitutions, gives the legislature the responsibility for the establishment of a system of schools. Doing what it criticizes the federal government for doing, the state passes on this responsibility to the local school districts it has created for that purpose and contributes only 43 percent of the cost of the mandate. The $16.5 billion annual cost of education requires that the local districts come up with almost $10 billion a year in support of the state's responsibility for public education.

Some school districts find no problem in implementing the unfairly funded mandate. A few districts even find it advantageous in that it is cheaper for their constituency to provide ample funds for a limited number of students than to contribute tax dollars as their share of support for the 3.5 million students in the state.

Other school districts find the unfairly funded mandate an imposition in that local taxable wealth is not so extensive that they can readily provide the local share from limited community tax bases. This is becoming even more difficult since school taxes are in severe competition with ever-growing needs of municipal and county governments, river authorities, soil conservation districts, community colleges and a host of other entities relying upon the property tax for the fulfillment of their duties – many of these duties also being unfunded, or poorly funded, state mandates.

And a few school districts do not have sufficient property tax wealth to make anything but a weak and ineffective effort at providing the quality education desired and demanded in a highly technological society and necessary for the future well-being of the community and the state.

Although disparities in educational funding were reduced considerably as a result of the *Edgewood vs. Meno* litigation, the premature closure provided by the Texas Supreme Court in its January 30, 1995 decision precluded a full solution of the problem.

- There are still significant disparities in the availability of funds between high and low wealth districts.
- The legislature has not addressed massive disparities in local funds available for school facilities.
- Local school districts are mandated to provide grounds, buildings, furniture and equipment in the complete absence of state funds.
- High wealth districts still enjoy a higher level of funds with a lower level of tax effort.

Education in Texas *- continued on page 3*

THE TEXAS SUPREME COURT'S DECISION IN EDGEWOOD IV: FINDINGS, IMPLICATIONS, AND NEXT STEPS

Albert Cortez, Ph.D.

On January 30, the Texas Supreme Court issued its ruling in *Edgewood vs. Meno*, the long-running battle for school-funding equalization being fought in the Texas state court system. In a five to four vote, a deeply divided court stitched together a majority opinion that left few educators satisfied. Property-poor school districts saw the court abandon its previous stance on equal revenue for equal tax effort, the cornerstone of the court's three prior verdicts in *Edgewood*.

Wealthy districts were dismayed at the court's decision to uphold the state's right to recapture district collected tax revenue. Most educators were appalled by the court's position that the state's obligations stopped when it provided for a "general diffusion of knowledge," a standard so low that it would actually permit the state to decrease the extent of existing support for public education. While stating platitudes about the need to maintain an efficient system, the court also left the door wide open to future and ongoing litigation on the issues when it implied that future systems would be measured against what is, at best, a nebulous and ever-changing standard.

The following highlights key facets of the majority opinion and those of the three dissenting opinions. It then goes on to propose some next steps in the aftermath of what can only be termed, generously, as the court "judgment." The legal analysis included in this bulletin provides a more in-depth summary of what lawyers have determined the majority opinion states (see page 7 by Kauffman).

What the Majority Opinion Said

In summary, the majority concluded that:

- The state is only responsible for ensuring a general diffusion of knowledge, and the requirement is currently addressed by a funding level of $3,500 per student;
- A "general diffusion of knowledge" standard does *not* require the provision of equal return for equal tax effort for property tax payers in poor, average or wealthy districts;
- Achieving a "general diffusion of knowledge" also permits unequalized enrichment, so long as "efficiency" – defined as making suitable provisions for a "general diffusion of knowledge"– is maintained;
- The delaying of funding cuts to wealthy districts while denying funding to property-poor districts during the transition to the system created by Senate Bill 7 (SB 7), although painful to property poor schools, did not render the system unconstitutional;
- The state legislature's reduction in the funding level authorized in previous legislation (SB 351) did not make the system inefficient;
- The state has the right to recapture revenue from property wealthy districts;
- The ability of wealthy school districts to choose from various options provided alternatives to consolidation and thus did not violate the provisions of *Dallas vs. Love* – (a case in which the court indicated that funds raised in one district

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Education in Texas *- continued from page 2*

The failure of the Texas Supreme Court to include the cost of facilities as an equalized feature of the finance system has a strong impact on the quality of education. Not only are facilities necessary because of their direct and indirect impact on the quality of instruction, but the absence of state funds makes it necessary that school districts divert instructional funds in order to ensure that the facilities meet the necessary health, fire and safety standards imposed by the community.

Round 1 in the battle for educational equity was lost by the children of the state in the 1973 U.S. Supreme Court decision in *Rodriguez vs. San Antonio ISD*. Round 2, which ended with the January 30, 1995 Texas Supreme Court decision, was only a partial victory for children in low wealth districts.

No congratulations are due to the Office of the Attorney General in Texas for its partially successful attempt to perpetuate an elitist, ineffective and discriminatory system of school finance. The massive but short-sighted effort of the attorney general's office to deny educational opportunity to Texas children through the successful defense of an indefensible system will continue as a state liability in future years.

Nor should there be joy in the Texas Education Agency (TEA) where every commissioner of education from J.W. Edgar in 1969 to the present commissioner, Lionel R. Meno, has allocated extensive legal, financial and personnel resources to perpetuate inadequate and inequitable resources for the education of children in low wealth districts. The hollow victories of TEA in both court cases create a paradoxical situation with the agency's recent launching of a massive effort for school accountability, while defending the inadequacies and inequities in the finance system which contribute to inadequate outcomes.

Although some of the political leadership of Texas has expressed a sigh of relief at the conclusion of this second round in the battle for school finance equity, their relief will be short-lived. The conclusion of the second round only marks the beginning of the third one.

At IDRA we will continue our commitment to equal educational opportunities for children. We commit all available resources to the identification and dissemination of information on the still existing inequities in the Texas system of school finance. We will continue to identify, acquire and allocate additional resources to this end, until such time as the performance of school children is no longer constrained by an inequitable system of school finance. Inferior education for any child in Texas is not acceptable.

We respectfully request civic organizations, businesses, community groups, school personnel and the general public to join us in our efforts against this unfairly funded mandate which the state of Texas has imposed on the most needy communities in the state.

Dr. María Robledo Montecel is Executive Director of IDRA. Dr. José A. Cárdenas is Director Emeritus and founder of IDRA.

DECLARATION: CHILDREN FIRST

The Texas Supreme Court's recent school finance ruling does not ensure a quality education for all Texas students. The Intercultural Development Research Association (IDRA) is taking action by giving civic organizations, businesses, community groups, school personnel and the general public the opportunity to voice their commitment to children. The declaration below outlines our commitment to the creation of a truly equitable funding system. Join us by lending your support to this declaration and to our efforts to achieve an equitable school funding system, including an equitable school facilities plan, that is acceptable for all of our children.

On January 30, 1995, the Texas Supreme Court issued a long-awaited ruling on the *Edgewood vs. Meno* school funding case. In its ruling, the court stated that "it is apparent from the court's opinions that we have recognized that an efficient system (of public education) does not require equality of access to revenue at all levels...The state's duty to provide [school] districts with substantially equal access to revenue applies only to the provision of funding for a general diffusion of knowledge...As long as efficiency is maintained [with efficiency defined as supporting a minimum or basic program] it is not unconstitutional for districts to supplement their program with local funds, even if such funds are unmatched [not equalized] by the state..."

Advocates for equitable educational opportunities for children are appalled by the Texas Supreme Court's view of the issues presented and respectfully disagree with their position. As eloquently summarized by Justice Spector in her dissenting opinion:

> This case is about a court that has come full circle. Just six years ago, faced with gross inequities in the school financing system, we unanimously decided that every school district must have similar revenues for similar tax effort. Today's cobbled-together opinion rejects that mandate, and instead sanctions dissimilar revenues for similar tax effort. This holding is not based on any matters tried in the district court. Instead, it is based on the *previously rejected* premise that the state's constitutional responsibility is satisfied by providing most school children with the very least, and the favored few with the best that money can buy. Because I believe this doctrine has no place in the field of public education, nor in the jurisprudence of this case, I dissent.

While recognizing that the Texas Supreme Court has the prerogative of issuing legal opinions, it is the prerogative of free citizens to voice their own opinions concerning the acts of political bodies and the soundness of their actions and decisions. Our perspectives on the issue include the following:

- Education is a state responsibility according to Article VII of the Texas Constitution:

  "It shall be the duty of the legislature to make suitable provisions for the support and maintenance of an efficient system of public schools." We believe that responsibility includes ensuring access to equitable funding for *all* students attending Texas public schools.

- Our opposition to the court's ruling stems from clear evidence that there remain vast differences in district property wealth and an understanding that these differences will perpetuate gross inequalities in the school taxes and the money available to educate students in property rich and property poor communities;

- We believe that the Texas Supreme Court erred in limiting state responsibility to the provision of an equalized *inferior* education for all students. In her dissenting opinion, Justice Spector stated that the system sanctioned by the decision will allow wealthy districts to expend $6,146 while the poorest districts will have access to only $3,608 at identical tax efforts, amounting to a difference of $50,760 per classroom; and

- We disagree with the court's proposition that unequal taxes for Texas citizens are legally acceptable. According to the record, the state's wealthiest school districts can tax themselves at $1.22 to fund a "basic" educational program while the state's poorest districts must tax themselves at a rate of $1.31 for the same result, a tax disparity of 9¢.

In contrast to the Texas Supreme Court, we believe that:

- As the district court noted, *all* children are the state's children and thus should have equitable access to educational opportunities;

- The demands of the workplace and skills needed to be full and productive citizens require access to more than a minimum education;

- Justice is not served when the court endorses the concept of superior education for some citizens while relegating others to a so-called "equalized" inferior one even when the commissioner of education testifies that "our present accreditation criteria at the acceptable level...does not match up with what the real world requirements are"; and

- Since local districts are required to provide grounds, buildings, furniture and equipment and since districts are currently required to bear this burden totally on their own, and since the ability to shoulder the load is entirely dependent upon unequal district property tax bases, the legislature has a moral and legal obligation to equitably fund school facilities.

For these reasons we hereby declare that we reject the high court's judgment and remain committed to working for the creation of a truly equitable funding system that provides equitable and high quality educational opportunities for *all Texas students*; one which provides all our citizens with the skills required for them to be full and productive members of our society. We do concur with the majority opinions' closing comment that despite their ruling, *Texas can and must do better*. Justice and morality require it, our economic survival as a state demands it.

María Robledo Montecel
Executive Director
Intercultural Development Research Association

Organizations

Alamo Reading Council
Laura Chris Green, president

American Civil Liberties Union (ACLU) - San Antonio Chapter
Larry Hufford, president

AVANCE
Gloria G. Rodríguez, president/ceo

Carver Community Cultural Center
Jo Long, Executive Director

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William L. Chapman, superintendent

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National Latino Children's Agenda
Rebeca María Barrera, chair

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Antonio González, president

Texas Association for Bilingual Education
Nancy J. Ramos, president

Individuals

Erasmo Andrade

Sally J. Andrade

Lydia Camarillo
Executive Director
Southwest Voter Registration Education Project (SVREP)*

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Familias*

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Jorge Piña
Director of the Theatre Arts Program
Guadalupe Cultural Art Center* and
Advisory Counsel for the Board of TENAZ*

Leo Zuñiga
Coordinator Governmental and Community Affairs
Alamo Community College District*

**Organizations listed for identification only. This does not indicate organizational endorsement.*

Texas Supreme Court's - continued from page 3

could not be required to be used to educate children in other districts);

- The local share requirements in SB 7 (which provided the funds recaptured by the state) did not constitute a statewide property tax;
- The delegation of authority to the commissioner to consolidate or annex property of districts did not constitute unconstitutional delegation of authority by the legislature; and
- The state does not have to provide vouchers as part of its obligation to make suitable provisions for education.

It is important to note that legal experts from all sides agree that the court essentially changed the criteria being used to judge the constitutionality of the Texas system. All previous decisions in the case had been made on the basis of whether or not the funding system achieved substantially equal revenue for similar tax effort. This court used a different and a much lower standard to judge the "efficiency" of the system, i.e., whether it "made suitable provisions for a general diffusion of knowledge." It then concluded (based on very limited evidence) that the "magic number" for a "general diffusion of knowledge" was $3,500 per student and that all Texas school districts had access to that level of funding at similar tax rates under the provisions of SB 7 (the state law whose constitutionality was being challenged).

Why the Existing System is Unacceptable

Why do equity proponents find the latest ruling unacceptable? Highlights from Justice Rose Spector's dissenting opinion succinctly points out the new system's major flaws. Justice Spector states, "According to the majority [of the court], the constitution [only] requires the legislature to provide a minimally adequate education, which the majority describes as a 'general diffusion of knowledge.'"

She then notes that "the majority equates this 'general diffusion of knowledge' with the provision of an accredited education, which the present commissioner testified 'does not match up with the real world requirements.' Justice Spector continues:

> SB 7 *does not* [emphasis added] provide districts with substantially equal access to similar revenue for similar tax effort...at a $2.00 tax rate per $100 of taxable value, the richest districts will generate $6,146...while the poorest can generate only $3,608.
>
> The unfairness of the system is exacerbated by Senate Bill 7's failure to include any provisions for facilities.
>
> Like another court did 22 years ago, the majority leaves the state with only the hope that the legislature will voluntarily choose to provide all children with similar educational opportunity. Unfortunately, in the meantime, countless children unjustifiably receive inferior education that may affect their hearts and minds in ways that may never be undone.

Implications of the Ruling

For future court-related efforts, there are no clear implications from the January 30 decision. Legal experts are still sorting through the majority opinion to determine what it all means. A hearing has been scheduled for March 1995 in Judge McCown's state district court to sort through the issues and decide the next steps. Based on the conclusion at this hearing additional actions on some issues may continue. Among those issues open for continuing legal action are the facilities funding issue and challenges to the Supreme Court's assumption of what it takes to fund an "adequate" program.

For the state legislature, the court ruling removes the mandate that it develop a comprehensive facilities funding plan by September 1995. On the other hand, the court's reference to the tenuous state position on the facilities funding issue puts the legislature on notice that some type of action may be necessary to avoid an obvious shortcoming of the current funding plan. The recent ruling does remove pressure to fully fund the provisions of SB 7, particularly in light of the court conclusion that the state was only responsible for providing an equalized minimal education while allowing unequalized enrichment for a favored few.

Whatever the short-term outcome, it seems that while closing the door on one phase of the litigation, the court's ruling establishes a number of bases for future legal challenges. Failure to provide funding for facilities would almost surely lead to a new suit challenging the constitutionality of the system as a whole. The court's references to accreditation as meeting the state's obligation for "making suitable provisions for a general diffusion of knowledge" sets the stage for a future challenge that would argue that the funding system does *not* cover the cost of meeting state accreditation requirements. The court's observation that future unequalized enrichment needed to provide for a basic education might be the basis for a future constitutional challenge of the new system.

If the system created by the legislature had provided for truly equitable financing, effectively addressed facilities funding, and provided a mechanism for maintaining the level of equity created, no further legal action might have occurred for at least a decade. Because of its failure to do any of these things and the court's observations on the viability of future challenges, some type of court action is almost guaranteed. While some may have tired of the battle for equalized funding, advocates have expressed a commitment to continue the effort until Texas gets the job done, and gets it done right.

Dr. Albert Cortez is the Director of the IDRA Institute for Policy and Leadership.

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RESPONSE FORM

If you would like to endorse the declaration on Pages 4 and 5, fill out this form and send it to IDRA.

I have read the attached Declaration: Children First

_____ I endorse the declaration on behalf of my organization.

_____ I endorse the declaration as an individual. My organization can be listed for identification only.

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Edgewood IV Creates New Standing For Reviewing Texas School Finance System

Albert Kauffman

The Texas Supreme Court has upheld the Texas School Finance Law (Senate Bill 7) against a variety of challengers and challenges. The Supreme Court completely upheld Senate Bill 7 as constitutional under the Texas Constitution and rejected the following claims:

- Low wealth districts' claims that the system did not provide persons in low wealth districts with substantially the same revenue at similar tax rates as that available to persons living in wealthy districts.
- Wealthy districts' claims that the wealth sharing provisions of Senate Bill 7 were in effect *ad valorem* taxes and denied the right to vote to persons in wealthy districts.
- Claims by a variety of districts that the state does not pay a sufficient and constitutional share of the entire school finance system.
- The claim by a few individual parents that the constitution requires the state to support a choice-voucher system.
- Claims by a few school districts that the state has legally redistributed the remaining monies from the old county education district (CED) system.

The general thrust of the decision was to abide by the Texas Legislature's definition of the funding necessary for an accredited system of education and the legislature's power to use the state's resources to support the school finance system, and to leave all "political" questions regarding school finance to the legislature's discretion. Unfortunately, the deference given to the legislature would almost surely lead Texas back into the old days of school finance where children in poor districts do not have the same opportunity and poor districts and their advocates have to bear the burden to go to the legislature and increase funding for all public schools in order to preserve any level of adequacy in education.

In *Edgewood I* (1989), *Edgewood II* (1991) and *Edgewood III* (1993) the Texas Supreme Court had consistently used a standard of review of the school finance system requiring that the system provide substantially equal access to similar revenues at similar tax rates for all districts in the state. *Edgewood IV* has significantly changed that standard. *Edgewood IV* created a new standard of review.

In summary, the court held that if a school finance system provides all districts substantially the same access to a level of funding that will support a "general diffusion of knowledge" then the system is constitutional, even if wealthy districts have both easier access to the "general diffusion of knowledge" and have unlimited access to more funds at higher tax rates than other districts in the state. Under this standard of review, the Supreme Court determined that $3,500 per weighted student was sufficient to support a "general diffusion of knowledge" and that amount could be obtained by all districts in the state at a $1.31 tax rate and by wealthier districts at a $1.22 tax rate. The $.09 difference was considered "not substantial." The new standard of review also allowed the court to deny the poor districts' claim that the $600 gap was not substantial equality and that at tax rates above $1.50, the gap between wealthier districts and poor districts would increase dramatically. It also allowed the court to deny low wealth districts' complaints about the decrease in funding under Senate Bill 7, the biennium lag of funding, and the complete failure to address the facilities problem in all districts.

The Supreme Court also rejected the wealthy districts' claims that the "five options" that are allowed to wealthy districts to reduce their effective property wealth violated the Texas Constitution under a wide range of provisions. In effect, the Supreme Court upheld the legislature's authority to set tax limits and to limit property wealth available to local districts to tax.

The Supreme Court rejected the "adequacy claims" of a large group of school districts arguing in effect that the state had to pay more than half of the overall school finance system and that the state could not issue "unfunded mandates" and reserved some issues for later trial in the District Court. The Supreme Court said that it was well within the legislature's discretion to set up a system in which local taxes accounted for more than half of the overall cost of education and the legislature had the power to issue "unfunded mandates."

The Supreme Court agreed with the District Court that the claims of a few individuals that the Texas Constitution requires a choice or voucher system were in effect "political questions." The court said that it was up to the legislature to determine how the legislature's duty to provide for an efficient system of public free school will be implemented.

The Supreme Court also dismissed the claims of a few districts, including North East and Somerset Independent School Districts, that the Commissioner of Education violated the law by requiring the remaining proceeds of the CED's to be distributed mainly to districts that lost the most funding in Senate Bill 7.

Most Important Issues and Future Developments

The most important part of the decision from the equity point of view is the new definition of an efficient system. The Supreme Court determined that the legislature has defined what is necessary to produce a "general diffusion of knowledge" and that this general diffusion of knowledge is articulated in seven public education goals (Tex. Ed. Code §35.001). These are indeed commendable and very broad goals but they have no real content to them, with one important exception. Goal B states:

> The achievement gap between educationally disadvantaged students and other populations will be closed. Through enhanced dropout prevention efforts, the graduation rate will be raised to 95 percent of students who enter the seventh grade.

In other words, one of the tenets of a "general diffusion of knowledge" is to remove the achievement gap between minorities and others and to reduce the longitudinal dropout rate from its present 45 percent down to 5 percent.

The Supreme Court then took the next jump in logic that these goals could be met by districts that were accredited under the Texas Accreditation Standards. The Supreme Court stated that if all districts in the state had access to an amount of funding sufficient to support the accredited system, the system would be a constitutional one.

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The next logical jump was to argue that $3,500 per weighted student was sufficient to meet the legislature's seven goals and provide an accredited system.

At this point, logical jumps and brutal realities clash. I know of no one working in Texas public schools today who feels that for $3,500 per weighted student any districts, let alone all districts, could close the gap between minority and non-minority students and reduce the dropout rate to 5 percent and meet all of the other goals. Nor does anyone feel that just because a district is accredited, it is making an approach to reaching all of the "goals." Nor do persons who work in the Texas public schools feel that for $3,500 per student districts could really meet accreditation standards – not just to impress the Texas Education Agency (TEA) accreditation team but the true spirit and letter of the accreditation requirements.

Unfortunately, this new standard of the Supreme Court is not the one that was used in the District Court before Judge McCown. The finding by the Supreme Court that $3,500 per weighted student is sufficient to meet the accreditation and the "general diffusion of knowledge" standard was not argued in the case, not agreed to as an issue by the parties or the court, and effectively forecloses future adequacy claims. These issues will have to be worked out in the future.

There are however, several encouraging signs in the decision. The Supreme Court did note the tremendous problems with facilities but pointed out that there was not a sufficient record to show lack of facilities. On the other hand, the court noted that if there was a sufficient record to show lack of facilities that the whole system, not just the facilities part of the system, would be unconstitutional. The court also noted that "the needs for funding an education are increasing and might very soon be beyond those to which the Texas system allows all districts access." The court noted with approval the four conditions that the District Court set for future school finance plans:

1. No repeal of Senate Bill 7 without a substitution that produces substantial equity.
2. No amendment of Senate Bill 7 in a manner that significantly reduces equity.
3. Senate Bill 7 must be sufficiently funded in future bienniums to produce substantial equity for the $1.50 tax cap on the local maintenance and operations tax rate.
4. Senate Bill 7's tax cap being raised without a corresponding increase in the guaranteed equalized yield.

Hopefully these comments by the Supreme Court will prevent, or at the very least impede, efforts in the legislature to further weaken the equity in the system.

The Concurring and Dissenting Options

It is important to review the concurring and dissenting opinions to get a glimpse of where the court might be going on school finance in the future. Indeed, Justice Cornyn's concurring opinion in *Edgewood III* included many of the concepts in the majority opinion he wrote in *Edgewood IV*. Similarly many of the concepts, and indeed fears, in Justice Dogget's opinion in *Edgewood II* (rehearing) became realized when the Supreme Court changed the standard of decision in *Edgewood IV*.

There are three separate opinions in the case that argue the following. Justice Hecht and Justice Owen wrote a concurring and dissenting opinion arguing that the system was equitable and efficient but that the wealth sharing provisions violate a 1931 Texas Supreme case and the constitutional prohibition of statewide *ad valorem* taxes.

Justice Enoch wrote a separate concurring and dissenting opinion again agreeing that the system was equitable and efficient but that the state is over relying on local property taxes and has failed to make suitable provision for public schools and also has violated the prohibition of statewide *ad valorem* taxes.

Justice Spector dissented, arguing that the system is inequitable and inefficient and strongly criticizing the other judges for changing the rules of decision in the case. Justice Spector argued that the opinion "sanctions *dissimilar* revenues for similar tax effort" [emphasis in original] and that the "holding is not based on any matter that was tried in the District Court." I think that it is not by accident that the last case quoted in Judge Spector's decision was *Brown vs. Board of Education*.

Conclusion

The *Edgewood* series of cases has produced a clear and strong statement that the Texas Constitution does require the legislature to provide for equality of access to funds in the school finance system. The most recent *Edgewood IV* appears to have weakened that standard and to allow, if not to encourage, further weakening of the school finance system. On the other hand, it is clear that the members of the court, as well as the public, realize that, in the long term, the system cannot continue without sufficient funding and equality and that goals of removing differences between minority and non-minority achievement, reducing dropout rates and increasing overall adequacy in the schools are matters that must be addressed by the legislature in order to avoid further court involvement.

Albert Kauffman is a senior litigation attorney for the Mexican American Legal Defense and Education Fund in San Antonio.

INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION
IDRA

5835 Callaghan Road, Suite 350
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